IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 518 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

PATEL RAMESHBHAI SHANKERBHAI

Appearance:

1. Criminal Appeal No. 518 of 1991

PUBLIC PROSECUTOR for Petitioner No. 1

MR DK MODI for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 23/01/2003

ORAL JUDGEMENT

#. The State of Gujarat has filed this appeal under Section 377 of the Criminal Procedure Code against the

order of sentence dated 30.4.1991 passed by learned JMFC, Patan in Criminal Case No.849/88 whereby the learned Judge convicted the respondent-accused for the offence under Section 7(1) and 16 of the Prevention of Food Adulteration Act and sentenced him to imprisonment till rising of the court and to pay a fine of Rs.500/= in default to undergo one month S.I.

#. According to the appellant-State of Gujarat the sentence is less than minimum required under the Act, therefore, it should be enhanced by imposing sentence of fine. Learned counsel Shri Modi appearing for respondent-accused however submitted that in appeal for enhancement he has all rights to challenge the conviction itself. He submitted that in the instant case, the respondent-accused has come out with the specific defence that milk which he was taking with him on the date of incident was not meant for sale and he was taking the said milk to his relatives place. His defence was substantiated by examining Defence Witness No.1-Naginkumar Gangaram Patel Ex.39. In that view of the matter, the learned Judge was wrong in convicting the accused. Learned counsel Shri Modi for the respondent-accused had relied upon the judgment of the Hon'ble Supreme Court in case of Corporation of the City of Nagpur Vs. Neetam Manikrao Kature reported in 1998 SCC (Cri.) 564 where the Hon'ble Supreme Court refused to interfere with the order of acquittal passed by the High Court in a case of food adulteration where Gurber's method was applied by the Public Analyst while preparing his report. In the instant case, report of the Central Food Laboratory was based on the Gurber's method. Therefore, Mr.Modi submitted that on this count also the accused is required to be acquitted. The aforesaid judgment of the Hon'ble Supreme Court squarely applies in this case and on this ground alone the impugned order of conviction and sentence recorded by the learned Trial Judge is required to be quashed and set aside.

#. In view of the above discussion, I am of the considered opinion that the learned Judge was erred in convicting the accused for the offence under Sections 7 and 16 of the Act, therefore, the impugned order of conviction and sentence passed by the learned Judge is required to be quashed and set aside.

#. In view of the above discussion, this appeal is dismissed and the impugned order of conviction and sentence passed by the learned Judge in Criminal Case No.849/88 convicting the respondent-accused for the offence under Sections 7(1) and 16 of the Prevention of

Food Adulteration Act and sentencing him imprisonment till rising of the court and to pay fine of Rs.500/= in default to undergo one month S.I. is hereby quashed and set aside. Fine, if paid, be refunded to the respondent-accused.

(B.J.Shethna, J.)

*Pvv